IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77 - 801

FLORA DAUN FOWLER, *Appellant*

v.

MARYLAND STATE BOARD OF LAW EXAMINERS,

Appellee

SUPPLEMENTAL BRIEF

FLORA DAUN FOWLER
9410 Woodberry Street
Seabrook, Maryland 20801

IN THE SUPREME COURT OF THE

UNITED STATES

FLORA DAUN FOWLER,

Appellant

v.

MARYLAND STATE BOARD OF LAW EXAMINERS,

Appellee

SUPPLEMENTAL BRIEF

In accordance with Rule 16(5) of the Rules of the Supreme Court of the United States, Appellant calls to the attention of this Court the case of Richardson v. McFadden, 540 F. 2d. 744, in which a petition for writ of certiorari was very recently docketed and which will soon be before this Court.

Although the case itself is not identical to Appellant's, there are certain questions discussed therein which are perhaps pertinent to the decision regarding

whether or not to note jurisdiction herein.

Whereas the complaining parties in Richardson are black law school graduates who failed the South Carolina bar examination, Appellant herein is a "white," fifty-four (54) year old grandmother and civic activist,as well as a law school graduate,who has twice failed the Maryland bar examination.

In Richardson, the United States Court of Appeals, Fourth Circuit (which would have had jurisdiction over Appellant's case had Appellant gone the United States District Court route) held that South Carolina bar examiners acted arbitrarily and capriciously, in violation of both due process and equal protection clauses of the Fourteenth Amendment in failing two black bar applicants, where there was no consistently applied distinction between failing applicants' scores and scores of

passing applicants who had lower cumulative totals and not obviously different configuration of scores, and where there was no review of applicants' performance other than examination of pattern of grades and whatever notes examiners may have made concerning each paper

The Court of Appeals, in that opinion, directed the district court, on remand, to order that two of the appellants be certified as having passed the South Carolina bar. (pages 750-52)

The Richardson case demonstrates the point that bar examiners' decisions are not infallible, that their grading may be sometimes capricious and arbitrary.

In the Fowler case, now before this Court, Appellant complains that the lack of due process prevents her from discovering whether similar arbitrariness and capriciousness may have influenced her bar examination grades.

The South Carolina Examiners contended that no review procedure was needed because the right of reexamination satisfied the requirements of due process. The same view was announced in Tyler v. Vickery, 517 F.2d 1089 (5th Circuit, 1975) cert. denied, 96 S. Ct. 2660, and in Whitfield v. Illinois Board of Law Examiners, 504 F. 2d 474 (7th Circuit, 1974).

But the Fourth Circuit (1976) declared:

> To our knowledge, a person is not required by any state to repeatedly demonstrate his competence to practice law. The rule is: once is enough. And the reason for the rule is that it takes work, effort, and nowadays, money to prepare for a bar examination. Moreover, the license is deemed of sufficient value that delay in getting it is an injury.
>
> It is true that some courts have held that reexamination is a more effective remedy than review because the administrative burden of allowing challenges was perceived to be too great. We are not persuaded.

The Fourth Circuit reasoning is most appropriate in Appellant's situation where

she entered law school when she was fifty (50) years old, graduated when she was almost fifty-three, and is fifty-four now. If she is compelled to take the examination over and over again, without knowing what her"mistakes", if any, are, then she could easily be of retirement age when she finally"passes" to the Board's satisfaction. For her, time is of the essence. Appellant believes that the due process provided by the Fourteenth Amendment to the United States Constitution is not due process delayed.

It appears that there is a conflict between the opinions rendered by the 5th, 7th, and 4th Circuits regarding due process as it relates to post bar examination review. The issue must be ultimately decided by this United States Supreme Court. Flora Daun Fowler, Appellant herein, prays that it will be determined now, in this case.

Respectfully submitted,

Flora Daun Fowler

Flora Daun Fowler
9410 Woodberry Street
Seabrook, Maryland 20801